

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DENNIS CLAYPOOL, individually) Civil No. CV04 00570 ACK KSC
and as Guardian Ad Litem for)
KRISTEN CLAYPOOL, a minor,) DEPOSITION OF
SHERYL CLAYPOOL, SCOTT) ERIC TROUT
CLAYPOOL, and KRISTEN CLAYPOOL) March 30, 2005
8:30 a.m.

Plaintiffs,

vs.

CAPTAIN ANDY'S SAILING, INC.,)
BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING, INC.,)

Defendants.

MATTHEW ISHAM, individually) Civil No. CV04-00559 ACK KSC
and as Guardian Ad Litem for)
HAYDEN ISHAM, a minor,)
ROXANNE BEST ISHAM,)

Plaintiffs,

vs.

BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING, LTD.,)
CAPTAIN ANDY'S SAILING, INC.,)

Defendants.

In the Matter of) Civil No. CV05-00017 HG LEK
The Complaint of CAPTAIN)
ANDY'S SAILING, INC., a Hawaii)
corporation, as pro hac vice)
owner, and EVANS PACIFIC, LTD,)
a Hawaii corporation, as owner)
of M/V SPIRIT OF KAUAI, O.N.)
995776, for exoneration from)
or limitation of liability.)

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EXHIBIT

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IN THE MATTER OF THE COMPLAINT) Civil No. CV05-00037 HG BMK
OF THE BLUE DOLPHIN CHARTERS,)
LTD. AND TERRY DONNELLY AS)
OWNERS OF THE VESSEL M/V BLUE)
DOLPHIN, O/N 1082212, FOR)
EXONERATION FROM AND/OR)
LIMITATION OF LIABILITY.)

DEPOSITION OF ERIC TROUT

Taken on behalf of Plaintiffs Dennis Claypool, individually
and as guardian ad litem for Kristen Claypool, a minor,
Sheryl Claypool, Scott Claypool, and Kristen Claypool at
Pacific Guardian Center, Conference Room B for use by
Pacific Reporting Services Unlimited, Suite 1470, Makai
Tower, 733 Bishop Street, Honolulu, Hawaii, commencing at
8:30 a.m. on March 30, 2005, pursuant to Notice.

Transcribed by: WILLIAM T. BARTON, RPR, CSR #391
Court Reporter, State of Hawaii

PACIFIC REPORTING SERVICES UNLIMITED
Suite 1470, Makai Tower
733 Bishop Street
Honolulu, Hawaii 96813
(808) 524-PRSU

1 the dive flag or dive float?

2 A. Yes.

3 Q. What is that distance?

4 A. I usually try to keep them within 50 feet.

5 Q. Why do you do that?

6 A. Because that's the standard.

7 Q. What is it you're concerned about? Why do you
8 try to keep the divers within 50 feet of the scuba float?

9 A. Because you're supposed to surface around a flag
10 within 50 feet unless there's an emergency.

11 Q. During your years at Mokol'e, have you ever seen
12 tour boats or other vessels transit through the area where
13 you conduct dive tours?

14 A. Yes I've been run over or had boats go directly
15 over me.

16 Q. How often does that happen?

17 A. To tell you the truth, it's happened more than
18 once. It's happened a couple times.

19 Q. Were you ever able to identify the boats that did
20 that?

21 A. No. I've seen the bottom of the hulls.

22 Q. When you went back topside, did you ask, Who was
23 that guy who drove over our dive tour?

24 A. No, because it wouldn't have done any good.

25 Q. Were you at all concerned when vessels were

1 transiting the area through which you were conducting scuba
2 diving?

3 A. Yes.

4 Q. Why was that? What was your concern?

5 A. Because accidents happen. You can see with this
6 accident, it's basically, didn't want something like that
7 for me to be in a situation that just occurred.

8 Q. How often had that happened prior to July 20,
9 2004?

10 A. How often? I don't understand the question.

11 Q. How often did you experience that, where boats
12 transited the area in which you were conducting the scuba
13 tour? How often did that happen, prior to July 20, 2004?

14 A. Probably happened to me, since I was out there,
15 three times.

16 Q. And that happened, even though you had a dive
17 float with you?

18 A. Yes.

19 Q. Did you indicate to any of your superiors at Blue
20 Dolphin on any of those occasions that that had happened to
21 you?

22 A. Oh, yeah. I've come up and been, you know, mad,
23 and told the captain, Someone just ran over me.

24 Q. And who were the skippers that you reported that
25 to on those occasions?

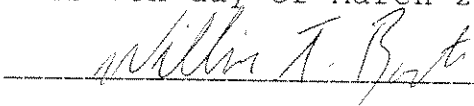
CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, WILLIAM T. BARTON, RPR, Certified Shorthand Reporter, State of Hawaii, do hereby certify that on March 30, 2005 at 8:30 a.m. there appeared before me ERIC TROUT, the witness whose deposition is contained herein; and that prior to being examined was duly sworn; that I am neither counsel for any of the parties herein, nor interested in any way in the outcome of this action;

That the deposition herein was by me taken down in machine shorthand and thereafter reduced to print via computer-aided transcription under my supervision; that the foregoing represents a complete and accurate transcript of the testimony of said witness to the best of my ability.

Dated this 7th day of March 2005 at Honolulu, Hawaii.


WILLIAM T. BARTON, CSR No. 391

Notary Public, State of Hawaii

My Commission expires August 7, 2005